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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

WOOD et al. *v.* WEAVER.

June 14, 1917.

[92 S. E. 1001.]

1. Trespass (§ 52*)—Cutting Timber—Damages—"Willful Trespass."—In an action for damages caused by cutting and conversion by defendant of trees belonging to plaintiff, where the trespass was committed under a bona fide claim of right, it was not willful, and the measure of damages was the stumpage value of the trees.

[Ed. Note.—For other cases, see Trespass, Cent. Dig. §§ 137, 138.* 13 Va.-W. Va. Enc. Dig. 239.]

For other definitions, see Words and Phrases, First and Second Series, Willful.]

2. Trespass (§ 44*)—Conversion of Timber—Burden of Proof.—Every trespass is prima facie willful, and the trespass being conceded or proven, the burden is on defendant to show that it was not willful, unless the contrary appears from plaintiff's evidence.

[Ed. Note.—For other cases, see Trespass, Cent. Dig. §§ 112-115.* 15 Va.-W. Va. Enc. Dig. 1009; 16 Va.-W. Va. Enc. Dig. 1211.]

Error to Circuit Court, Lunenburg County.

Cast by W. H. Wood and another against R. S. Weaver. From the judgment as reduced, plaintiffs bring error. Affirmed.

Geo. Allen, of Victoria, and *P. P. Homes*, of Boydton, for plaintiffs in error.

N. S. Turnbull, Jr., of Victoria, for defendant in error.

TOWN OF APPALACHIA *v.* MAINOUS.

Sept. 20, 1917.

[93 S. E. 566.]

1. Municipal Corporations (§ 345*)—Power of Council—Discretion.—Whether a bond should be required of contractors paving a city street is in the first instance a matter resting entirely in the discretion of the town council, and whether it should thereafter be waived rests equally within their discretion, with which the courts will not

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

interfere, even though a citizen complains that, because of the absence of a bond, a forfeiture probably could not be enforced.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 881.]

2. Equity (§ 148 (1*))—Pleading—Multifariousness.—A bill seeking relief for private injuries resulting from the construction of a street is not rendered multifarious by an incidental allegation that complainant's rights as a citizen were infringed by the common council's waiver of the requirement that the contractors should give a bond, or that a member of the paving committee was interested in the contract, for the latter averment was purely incidental, and no relief could be granted on account of the council's waiver of the requirement as to a bond.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 133.]

3. Certiorari (§ 1*)—Municipal Corporations (§ 323 (1*))—Enjoining Improvement—Remedy at Law.—A writ of certiorari is a common-law writ, issued from a superior court to one of inferior jurisdiction, commanding the latter to certify and return to the former the record in a particular case, and is in the nature of a writ of error, bringing up the record of an inferior tribunal, to enable the appellate court to determine whether there has been an irregularity; and hence, where the proceedings of the paving committee and council of a city were regular on their face, although a property owner, who claimed that he was injured by the grading of a street was, by misrepresentations that the inquiry had not been concluded, prevented from taking the appeal allowed by the statute, the writ of certiorari did not offer any adequate remedy at law, precluding a suit in equity.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 736, 746; 10 Va.-W. Va. Enc. Dig. 192; 12 Va.-W. Va. Enc. Dig. 883.]

For other definitions, see Words and Phrases, First and Second Series, Certiorari.]

4. Municipal Corporations (§ 323 (1*))—Enjoining Improvement—Jurisdiction—Relief.—Where a property owner was injured by the action of the common council and paving committee of a city, which failed to notify him that his claim for damages was rejected, so as to enable him to take an appeal within the time allowed, such property owner may sue to enjoin the continuance of the work and to obtain relief.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 883.]

5. Municipal Corporations (§ 323 (3*))—Enjoining Improvement—Preliminary Injunction—Time for Application.—Where a contract for street paving was executed September 4th, and work commenced about September 22d, an injunction against continuance, granted on the 29th, was not improper because of delay in applying for relief.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 884.]

6. Municipal Corporations (§ 323 (3*))—Street Improvements—Ob-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

jections—Failure to Determine—Evidence.—In a suit to enjoin proceeding with street paving, and for general relief, evidence held to sustain a finding that the objections of complainant property owner had not been overruled, as required by Acts 1912, c. 160, providing for objections and appeals, and that subsequent proceedings were void.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 884.]

7. Municipal Corporations (§ 323 (3)*)—Public Improvements—Injunction—Relief.—A paving committee and the city council overruled a property owner's claims for damage, but failed to notify him of the rejection of such claims, so as to enable him to appeal. Thereafter the property owner sued to enjoin the construction of the improvement and for general relief. Held, that as it was for the council to determine what streets it will pave and the character of the paving, and its decision, in the absence of fraud, is conclusive, and cannot be controlled by the courts, a decree which, after requiring the council to ascertain the damage which might accrue to complainant by reason of the improvement, required the completion of the improvement according to specifications, is erroneous as to the last requirement, and an injunction should be dissolved on condition that the municipality, if desiring to complete the improvement in front of complainant's property, should proceed according to the statute, with leave to complainant, in case he has been damaged, to sue at law.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 883.]

Appeal from Circuit Court, Wise County.

Bill by one Mainous against the Town of Appalachia. From a decree for complainant, defendant appeals. Reversed in part.

C. R. McCorkle, of Wise, for appellant.

Morton & Parker, of Appalachia, for appellee.

BROTHERHOOD OF RAILROAD TRAINMEN *v.* VICKERS.

Sept. 20, 1917.

[93 S. E. 577.]

1. Pleading (§ 193 (5)*)—Demurrer to Declaration—Grounds.—A demurrer was properly overruled, where the declaration stated a case, and facts were sufficiently certain to be understood by defendant.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 502.]

2. Witnesses (§ 343*)—Impeachment—Time of Acquiring Reputation.—Reputation for truth and veracity of a party who is a witness,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.